

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EARL ANDERSON,	:	
	:	NO. 1:01-CV-00610
Petitioner,	:	
	:	
	:	ORDER
v.	:	
	:	
	:	
MARGARET BAGLEY,	:	
	:	
Respondent.	:	

On September 13, 2001, the Court received Petitioner Earl Anderson's ("Anderson") petition for a writ of habeas corpus filed pursuant to 28 U.S.C. §2254 (doc. 1). Respondent Margaret Bagley filed a return of writ on December 11, 2001 (doc. 4), and the Court received Anderson's traverse on January 7, 2002 (doc. 5). Ultimately, the assigned Magistrate Judge issued a Report and Recommendation on November 19, 2003, recommending that the petition be dismissed, that no certificate of appealability should issue, and that the Court should deny Anderson leave to proceed in forma pauperis on appeal (doc. 5).

Anderson was served with the Report and Recommendation on or about November 24, 2003 (doc. 8). Anderson was therefore afforded proper notice of the Magistrate Judge's Report and Recommendation required by 28 U.S.C. § 636(b) (1) (C), including that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v.

Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Defendant has failed to file any objections thereto within the ten days provided for by Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(C).

Pursuant to 28 U.S.C. §636(b), the Court has reviewed the Report and Recommendation de novo, finding it both thoughtful and proper. The Magistrate Judge's conclusion that Anderson's petition is time barred is correct; accordingly, it is barred pursuant to 28 U.S.C. § 2244(d). Furthermore, the Court agrees that "jurists of reason" would find this procedural ruling undebatable and that, as a result, issuance of a certificate of appealability would be improper. Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). Finally, the Court finds, in agreement with the Magistrate Judge, that no appeal of this holding could be taken in good faith.

Accordingly, the Magistrate Judge's Report and Recommendation (doc. 8) is hereby ADOPTED IN ITS ENTIRETY. Anderson's Petition for Writ of Habeas Corpus (doc. 1) is DISMISSED WITH PREJUDICE. Issuance of a certificate of appealability of this Order pursuant to 28 U.S.C. 2253(c) is DENIED. The Court hereby CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order may not be taken in good faith; leave to proceed in forma pauperis on appeal is therefore DENIED.

SO ORDERED.

Dated: January 13, 2004

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge